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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/066,132
Filing Date: January 30, 2002
Appellant(s): DAWE, JULIE T.

R. Ross Viguet
Reg. No.: 42,203
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This Examiner's Answer is in response to the appeal brief filed 13 July 2005, and is a correction of the Examiner's Answer filed 5 October 2005, which is hereby vacated.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Martinez et al (US Patent 5,956,665)

Jancke et al (US Patent 5,764,913)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-5, 7-8, 11, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Martinez et al (US Patent 5,956,665), hereinafter Martinez.

Regarding claims 1, 7, and 13, Martinez teaches a method, system, and software program capable of receiving a first data stream having a first format (taught as the retrieval of information related to multiple components of a system by a monitoring unit, at col. 10, lines 4-19), encapsulating the data stream into a predetermined second format and aggregating the data by applying a first set of rules for organizing the information into a plurality of categories (taught as the mapping of received information into a data structure possible of obtaining a variety of forms, at col. 10, lines 20-31, and the updating and display of the data, at col. 11, lines 18-30, which inherently use a first set of rules to determine the location of received data within the data structure), and displaying a graphical representation of parameters relating to each

category in response to changes in the information contained in the data stream (taught as the display and subsequent monitoring of component attributes in the system, at col. 10, lines 32-48).

Regarding claim 4, Martinez teaches performing the steps of receiving, encapsulating, aggregating, and displaying data in real time, taught as the monitoring of components and updating of data related to those components when changes take place, at col. 2, lines 47-50.

Regarding claims 5 and 11, it can be seen in Fig. 6 and at col. 10, lines 32-42 that Martinez teaches creating an artistic graphical representation for presenting information to a user.

Regarding claim 8, Martinez teaches the analog display of information, taught as the use of a meter reflecting the status of system components, in item **92** of Fig. 6, which discloses a digital readout above an analog meter for tracking the value of component parameters.

Regarding claim 16, Martinez teaches a method, system, and software program capable of receiving a second data stream in a third format (taught as the retrieval of information related to multiple components of a system by a monitoring unit, at col. 10, lines 4-19), encapsulating the second data stream into a second format and aggregating the data by applying rules for organizing the information into a plurality of categories (taught as the mapping of received information into a data structure possible of obtaining a variety of forms, at col. 10, lines 20-31), and displaying a graphical representation of parameters relating to each category in response to changes in the information contained in the data stream (taught as the display and subsequent monitoring of component attributes in the system, at col. 10, lines 32-48).

Claim Rejections - 35 USC § 103

Claims 2-3, 6, 9-10, 12, 14-15, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez and Jancke et al (US Patent 5,764,913), hereinafter Jancke.

Regarding claims 2, 9, 14, and 17, Martinez has been shown to teach a method, system, and software program capable of receiving a first data stream having a first format (taught as the retrieval of information related to multiple components of a system by a monitoring unit, at col. 10, lines 4-19), encapsulating the data stream into a second format and aggregating the data by applying rules for organizing the information into a plurality of categories (taught as the mapping of received information into a data structure possible of obtaining a variety of forms, at col. 10, lines 20-31), and displaying a graphical representation of parameters relating to each category in response to changes in the information contained in the data stream (taught as the display and subsequent monitoring of component attributes in the system, at col. 10, lines 32-48).

However, Martinez fails to explicitly teach encoding an aural representation of parameters relating to changes in information of the data stream.

Jancke teaches a status monitoring system for a computer network similar to the monitoring system of Martinez. Furthermore, Jancke teaches using an audio tone or wave file to notify a user of the operational state of a node in the network, at col. 3, lines 54-57.

Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Martinez and Jancke before him at the time the invention was made to modify the monitoring and notifying system of Martinez to include the aural notification of Jancke in order to obtain a system of monitoring streaming data wherein a user is notified of changes and status aurally.

One would be motivated to make such a combination for the obvious advantage of keeping a user aware of the status of data without having to view the data changes on a monitor.

Regarding claims 3, 6, 10, 12, 15, and 18, Martinez has been shown to teach a method, system, and software program capable of receiving a first data stream having a first format (taught as the retrieval of information related to multiple components of a system by a monitoring unit, at col. 10, lines 4-19), encapsulating the data stream into a second format and aggregating the data by applying rules for organizing the information into a plurality of categories (taught as the mapping of received information into a data structure possible of obtaining a variety of forms, at col. 10, lines 20-31), and displaying a graphical representation of parameters relating to each category in response to changes in the information contained in the data stream (taught as the display and subsequent monitoring of component attributes in the system, at col. 10, lines 32-48).

However, Martinez fails to explicitly teach defining a color palette where the colors are associated with human recognized process status conditions. Jancke teaches defining a color palette where the colors are associated with human recognized process status conditions, taught as the use of a stop light metaphor incorporating the colors green, yellow, and red for various states of a node, at col. 3, lines 24-36.

Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Martinez and Jancke before him at the time the invention was made to modify the data monitoring system of Martinez to include the stop light metaphors of Jancke in order to obtain a data monitoring system capable of associating displayed color with human recognized process status conditions.

One would be motivated to make such a combination for the advantage of "at-a-glance" status determinations, wherein a user would be capable of recognizing the condition of a monitored unit simply by recognizing an associated color.

(10) Response to Argument

Appellant's arguments filed 13 July 2005 have been fully considered but are not persuasive.

Appellant's arguments with respect to claims 1, 4, 5, 7, 8, 11, 13, and 16, rejected under 35 U.S.C. 102(b) as being anticipated by Martinez et al, (US Patent 5,056,665) hereinafter Martinez, are hereby traversed.

Independent claims 1, 7, and 13 disclose similar limitations, all generally incorporating the following: a first data stream having a first format; encapsulating or a means to encapsulate said first data stream in said first format into a predetermined second format; aggregating or a means to aggregate information contained in the first data stream output in a second format by applying a first set of rules organizing said information into a plurality of categories; and displaying or means for displaying a graphical representation of parameters relating to each of said categories in response to changes in said information contained in said first data stream. The Examiner would like to note that claims 7 and 13 limit the first data stream as being from an application program, while claim 1 does not.

The Examiner maintains that Martinez teaches all of the limitations of claims 1, 7, and 13, as stated above. The first data stream having a first format is data taken from the components of the system being monitored by Martinez, and includes parameters such as Temperature, Voltage, and Current as relating to a given component, as seen in Fig. 6. The encapsulating of such component information into a second format and aggregating of the component information into a second format by applying a first set of rules organizing the information into a plurality of categories is shown by Martinez in the mapping of the received component data. Data taken from a raw, first format is translated into a user-readable Graphical User Interface (GUI), and must inherently follow a set of rules in order to translate the raw data into the displayed GUI, of which there are several categories, each relating to a component of the system. See Martinez, col. 10, lines 20-31, which discloses the mapping of component data into a data structure,

and the manipulation of that data by the GUI for the purpose of creating the display. As discussed above and seen in Fig. 6, Martinez displays a graphical representation of parameters relating to the component data, and does so in response to changes in the information of the component data stream, as the system constantly polls the devices for current parameters, and allows a user to set component parameters as necessary, displaying the parameter changes dynamically. See Martinez, col. 10, lines 21-42, which discloses GUI display updating and user component control.

Appellant argues on page 5 of the Appeal Brief that Martinez fails to teach the data being received and operated upon as being from the application program itself, instead being associated with various components of the system. With respect to claim 1, the Examiner would like to note that the recitation of application program data or an application program data stream has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). However, with respect to claims 7 and 13, the Examiner contends that Martinez discloses the limitation of a first data stream received from an application program, as the component monitoring application of Martinez creates a data stream related to the monitored components through polling operations (see col. 11, lines 21-30), and more directly from the application itself through user interaction with the component control GUI of Martinez (see col. 11, lines 31-42). The Examiner further believes these disclosures to teach an application program (see Appellant's Appeal Brief, pages 5-6) that does in fact display the status of the application program, especially in the case of the user-controlled component parameters, which reflect values set by way of the component control GUI.

Appellant argues on page 6 of the Appeal Brief that Martinez fails to teach aggregation of aggregate information contained in the first data stream output in a second format by applying a first set of rules organizing said information into a plurality of categories. The Examiner maintains that in order for component data to be taken from the mapping operation data structure and displayed on the GUI, a set of rules in the form of computer-readable instructions must inherently be followed to allow for the access, retrieval, ordering, and display of component related data, as taught in col. 10, lines 20-31 of Martinez. This data is taken from its first format (component data stored in the mapping operation data structure) and therefore aggregated into a second format, one that allows for said data to be displayed on the GUI in a location corresponding to the correct component.

With respect to claims 5 and 11, Appellant further argues on pages 7-8 of the Appeal Brief that Martinez does not teach "creating an artistic graphical representation for presentation of information to a user". The term "artistic graphical representation" has been subject to the broadest reasonable interpretation by the Examiner, who maintains that any graphical representation (such as that of Fig. 6) is in and of itself artistic, whether or not some find such a representation to be crude or utilitarian.

With respect to claim 8, Appellant argues on page 8 of the Appeal Brief that Martinez fails to teach a "display further configured to generate an analog representation of said information". Appellant concedes that Martinez teaches the digital display of data, and further that there is a bar having numbers and lines which appears to be related to the digital display of data. However, the Examiner believes an analog representation of data (for example, a bar similar to that of Martinez including a needle or other indicator) and how the metered or bar values are represented on the GUI in general (either in digital or analog form) are non-functional descriptive material, and as such cannot lend patentability to an invention that would have otherwise been taught by the prior art.

With respect to claim 16, Appellant argues on pages 8-9 of the Appeal Brief that Martinez fails to teach "encapsulating a second data stream output in a third format from said application program into said

predetermined second format". The Examiner maintains that the Martinez reference teaches such, as Martinez has been shown to teach constant polling and user manipulation of component parameters. As such, a plurality of data streams are sent to and from the application program in a data format, and then encapsulated and translated into the second, GUI-compatible format through the use of a set of computer-readable instructions. The Examiner would like to note that the first and third output stream data formats and the first and second set of rules are not specifically claimed to be different, and are thus subjected to the broadest reasonable interpretation by the Examiner.

Appellant's arguments with respect to claims 2, 3, 6, 9, 10, 12, 14, 15, 17, and 18, rejected under 35 U.S.C. 103(a) as being anticipated by Martinez and Jancke et al (US Patent 5,764,913), hereinafter Jancke, are hereby traversed.

With respect to claims 2, 9, 14, and 17, Appellant argues on pages 9-10 of the Appeal Brief that the Examiner has failed to address the limitation that the "aural representation be of parameters relating to each of the categories". The Examiner notes that the Martinez reference is relied upon for the display of component parameters and their subsequent changes, each parameter relating to a category. Jancke is directed towards the aural notification of state changes of a node in a network. Thus, incorporation of the aural notification of Jancke into Martinez would take place in the area where changes are brought to the user's attention, in this case, with respect to component parameters and their subsequent changes, each parameter relating to a category.

In response to applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*,

958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner has given motivation in stating: "[o]ne would be motivated to make such a combination for the obvious advantage of keeping a user aware of the status of data without having to view the data changes on a monitor". In short, the incorporation of aural notification into the GUI of Martinez would be preferable, as it would afford a user with the option of directing his visual attention elsewhere, while still being able to stay up-to-date on the status of component data, which is certainly a desirable feature.

With respect to claims 3, 6, 10, 12, 15, and 18, as argued on pages 10-11 of the Appeal Brief, the Examiner has further clarified the rejection under 35 U.S.C. 103(a) by adding statements of obviousness and motivation lacking in the previous Office Action, without changing the grounds of rejection. The Examiner has noted that providing colors that are well-known to represent status conditions (for example green denotes a satisfactory condition, yellow denotes a cautionary condition, red denotes a serious or unfavorable condition) to be "at-a-glance" status determinations, wherein a user would be capable of recognizing the condition of a monitored unit simply by recognizing an associated color. Thus motivation has been provided to combine the Martinez reference with the colored status conditions taught by Jancke.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Michael Roswell

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